

REMARKS

The Applicants and the undersigned attorney wish to thank both Examiners Andrea Valenti and Examiner Jeff Gellner for their time during the interview on Wednesday, February 9, 2005, which was attended by the undersigned attorney and Mr. Charles Walton, a co-inventor and president of the Assignee of record. During the interview, claims directed toward the vessel and a plant were focused upon, in particular, claim 8. The Examiners suggested that the claim be amended to include the features depicted in Fig. 6, further defining the structure of the trough and the peripheral flange, that the roots are presented in a second growing medium and that the second medium and foam (core) share a common surface. The Applicants have partially complied by amending claim 8, as will be discussed hereinbelow and corresponding amendments have also been made to method claim 1.

With respect to the Final Action, Claims 1-4 and 14 have been rejected under 35 U.S.C. § 103 (a) as unpatentable over Tabbert in view of Weder, both of record. During the interview, the attendees on behalf of the Applicants, Mr. Walton and the undersigned attorney, (hereinafter referred to as the Attendees) explained that Tabbert was a patent developed and owned by the Assignee of record. While structurally it provides a foam core, showing a first cavity in the bottom and a second cavity in the top, a filling pipe connecting the two and, a waterproof coating along the outer surfaces, the Tabbert article is a holder for the arrangement of natural flowers, twigs, branches and fruits, all of which are cut and are not planted in the holder to propagate roots and continue growing.

The Applicant's invention is directed toward living plants having a root ball, the latter being planted within a cavity in the upper portion of the vessel. The Applicant's vessel is designed to allow and promote growth of the roots through a passageway and into a lower, or second, cavity in the foam core. During the interview, digital photos of several aeroponic vessels characterizing the present invention were presented. Each carried a growing plant and had been cut in half to present a cross-

section of the interior. It was explained with reference to the cavities and the passageway that a majority of the roots from each plant had freely propagated within the aeroponic spaces and while some roots passed into the foam core, their presence was considerably less (as depicted in Fig. 4). Plants located in the Applicant's vessels had correspondingly greater root growth and upper (plant) growth than the same plants, located in comparable vessels that did not provide aeroponic spaces.

The Attendees also argued that the concavity (5) in Tabbert would not receive nor, was intended to receive a root ball. In support and comparison, the embodiment described in Fig. 6 of the subject application was discussed. The Applicants have amended claim 8 in a manner that identifies the roots of the living plant and accompanying growing medium and that the latter are received in the second cavity of the vessel, which is clearly not suggested by Tabbert. Claim 8 also calls for a vessel and living plants in combination, as previously recited in independent claim 14. The latter claim has been canceled with this response, thereby obviating the need to distinguish it over the cited references.

The first rejection also relies upon Weder where the Examiner has asserted that Weder teaches that both cut flowers and plants with roots can be planted in water saturated foam and then contended that such a modification could be made to Tabbert. The Attendees responded by noting that Weder was directed toward a collapsible vessel for flowers, merely a bud vase, as shown in the drawings. As depicted in Fig. 4 of Weder, the stem of a cut flower is inserted into a floral holding material (foam) provided in the base of the vessel. The Examiner noted with reference to column 5, that the floral grouping (42) could comprise a root portion (not shown) and that it and a growing medium could be inserted into the Weder vase. As previously explained, for Tabbert, Weder does not provide a cavity in the foam body for receipt of such roots and growing medium and, more importantly, there is no suggestion of providing any chamber or space for the propagation of roots in Weder. Combining Weder with

Tabbert does not suggest claim 8 as amended, because there is no suggestion from the two of providing an actual cavity in the foam member of Tabbert to receive a root ball.

Returning to the Final Action, claims 4-13 and 15-20 were rejected under 35 U.S.C. § 103 (a) as unpatentable over Tabbert in view of Weder, and further in view of Burleigh, all of record. Recognizing that Tabbert did not provide a peripheral trough, the Examiner has added Burleigh, which shows a vessel with a trough in a flange and a bore communicating with a first cavity.

The Applicants respectfully traverse. Claims 5 and 8, within this grouping refer to the external flange and peripheral trough, depicted in Fig. 6, which features will be addressed hereinbelow. Dependent claims 15-20 have been canceled with their parent, claim 14, also obviating any further discussion of these claims herein. Burleigh does not provide a bore through the media 22 (soil) but rather a separate metal tube. The cavity provided by Burleigh is two channels 15 formed with the aid of a false bottom (14), also of metal. Burleigh does not suggest a cavity formed in growing media; instead he teaches metal compartments so that there is first a metal boundary defining the channels, then an overlay of gravel, clearly not growing media, over which is placed the growing media. As noted during the interview, there is no means for any roots of a plant, planted in the flower box taught by Burleigh, to grow aeroponically. Burleigh's flower box lacks a passageway (of air) into the channels 15 through which the roots can grow.

Additionally, the bore passing through the foam core of the Applicant's vessel, depicted in Fig. 6, is not enclosed in metal or by any other boundary. Hence, when water is applied to the trough and flows down the bore, it is concurrently wetting the foam core, while traveling to the cavity in the base. The combination of Burleigh with the other references does not suggest any such construction. Also, if a second growing media were added to Weder, it would completely encompass the upper surface of the floral holding material 40 and thus, the passage of a bore or metal passageway through the vessel would pass through both layers of material. The Applicant's vessel employs

a passageway through the foam core (the upper media) and into the cavity in the base. It does not pass through the root ball and second growing media surrounding it.

Based upon the foregoing amendments and supporting remarks, the Applicants believe that article claim 8 as amended now clearly defines a vessel with at least one growing plant with roots, that is patentably distinct from the references of record. Similarly, independent claim 1, directed toward a method for the propagation and aeroponic growing of plants has been amended to include recitations that pertain to the vessel of claim 8 and is also deemed to be patentably distinct from the references of record.

Claims 1 and 8 have not been directed toward the embodiment of Fig. 6 because the Applicants believe that the invention depicted in Figs. 1-4 is patentably distinct over the combined teachings of Tabbert and Weder and accordingly, reconsideration of these claims and withdrawal of the rejections is respectfully requested. After considering the references fully, the Applicants determined that the art does not teach or suggest a vessel providing the two separate cavities, one of which receives a living plant with roots provided in a second growing medium, where the two media share a common interface along the surfaces of the (second) cavity. Recitations directed toward the embodiment of Fig. 6 that were deleted from independent claim 8 have been recited in new dependent claim 21.

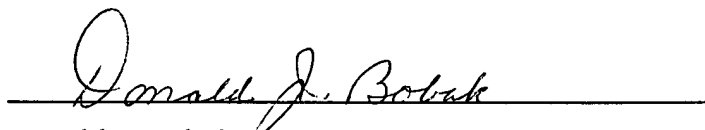
The Applicants submit that no new matter has been inserted and that no further issues have been raised by the amendments to claims 1 and 8. Recitations that have been added to these claims were discussed at length with the Examiners during the interview and are fully supported by the drawings and specification. Dependent claim 2, 3 have been canceled, thereby obviating the various rejections of these claims. As for dependent claim 9-13, their rejections have not been specifically addressed as they are dependent from claim 8 which, as amended, is distinguishable over the art of record. With the amendment to claim 8, claims 14-20 have been canceled, as noted hereinabove. The Examiner is respectfully requested to reconsider and withdraw all of

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the rejections to independent claims 1 and 8, based upon the amendments and accompanying remarks and a formal Notice of Allowance of claims 1, 4-7, 8-13 and 21 is earnestly solicited. Although this response is made after a Final and claim 21 has been added, the total number of claims remaining has not been increased.

Should the Examiner wish to discuss any of the foregoing in more detail, the undersigned attorney would welcome a telephone call. No new fees are believed due at this time, as the remaining claims do not exceed 20 or three independent.

Respectfully submitted,

A handwritten signature in cursive script, reading "Donald J. Bobak", is written over a horizontal line.

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